

RECEIVED
Copyright Royalty Board

JUN 07 2017

Closing Argument

June 7, 2017

amazon

pandora®

 Spotify

Google

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Phonorecords III Hearing, Mar. - Apr. 2017

Closing Overview

- Michael S. Elkin on Behalf of Amazon
- Benjamin E. Marks on Behalf of Pandora
- A. John P. Mancini on Behalf of Spotify
- Kenneth L. Steinthal on Behalf of Google

Michael S. Elkin on Behalf of Amazon



- Revenue is maximized through a variety of business offerings that cater to heterogeneous consumer preferences
- Services are generating increased revenues; copyright owners are thriving (i.e., the market is healthy)

Benjamin E. Marks on Behalf of Pandora



- Reasons the Board should set an “all-in” headline rate for musical works royalties and allow a deduction for performance rights royalties
- The benchmark evidence offered by the parties

A. John P. Mancini on Behalf of Spotify



- A percentage of revenue structure is both appropriate and economically efficient
- Disastrous impact of the Copyright Owners' proposal
- 801(b) analysis favors the Services' proposals

Kenneth L. Steinthal on Behalf of Google



- History of *Phonorecords I* and *II*
- Subpart A benchmark
- Operation of the TCC prong

Diverse Consumers — Listening Hours per Month

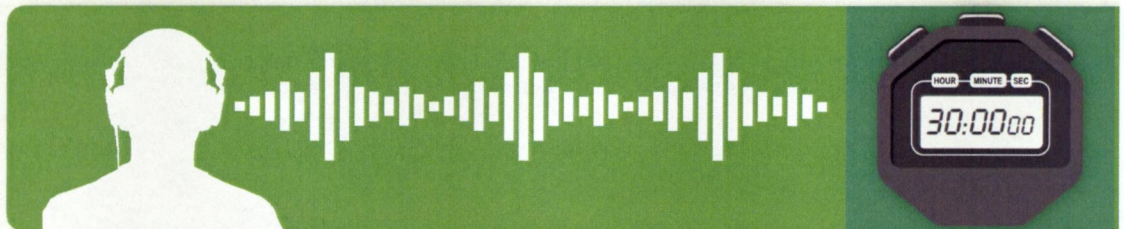
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- The average Prime Music user listens to approximately 11 hours of music per month

Prime music



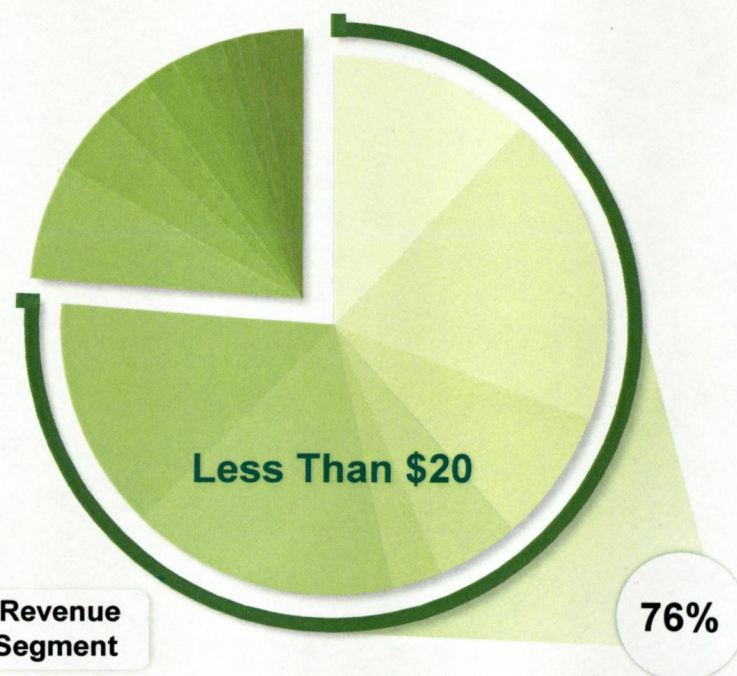
- The average full catalog subscriber listens to an average of more than 30 hours of music per month



Source: Trial Ex. 1 (Mirchandani-WDT ¶ 36); 3/15/16 1348:7-15 (Mirchandani); Trial Ex. 15 (Brost-WDT ¶ 6, 10); Trial Ex. 17 (Amazon's Prime Music Average Monthly Hours by Listener Segment).

Diverse Consumers - Customer Spending

\$120.00 and over	3%
\$110.00 – \$199.99	0%
\$100.00 – \$109.99	1%
\$90.00 – \$99.99	1%
\$80.00 – \$89.99	1%
\$70.00 – \$79.99	1%
\$60.00 – \$69.99	1%
\$50.00 – \$59.99	2%
\$40.00 – \$49.99	3%
\$30.00 – \$39.99	4%
\$20.00 – \$29.99	7%
\$10.00 – \$19.99	14%
\$5.00 – \$9.99	16%
\$4.00 – \$4.99	3%
\$3.00 – \$3.99	5%
\$2.00 – \$3.99	8%
\$1.00 – \$1.99	19%
\$0.00 – \$99	12%



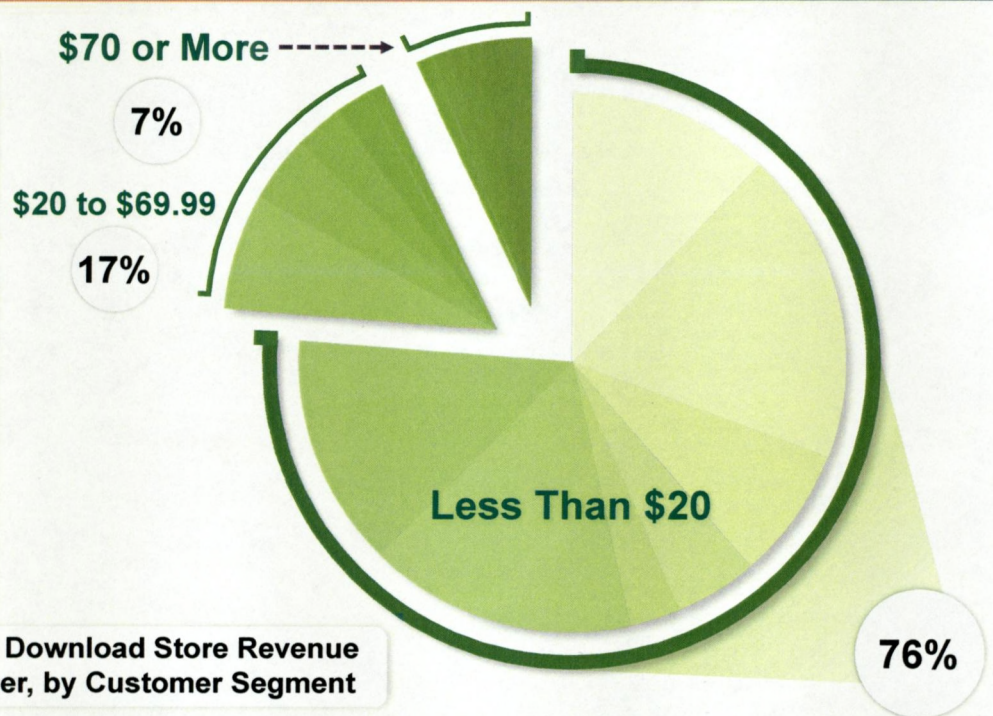
**2013 Digital Download Store Revenue
per Customer, by Customer Segment**

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Source: Trial Ex. 15 (Brost WDT ¶ 5); Trial Ex. 1 (Mirchandani WDT ¶¶ 22, 26); 3/15/17 Tr. at 1343:10-23 (Mirchandani).

Diverse Consumers — Customer Spending

\$120.00 and over	3%
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\$0.00 — \$.99	12%

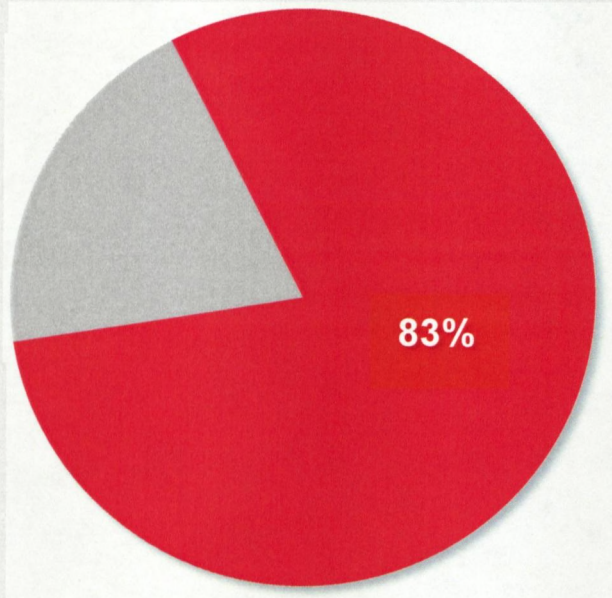


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Source: Trial Ex. 15 (Brost WDT ¶ 5); Trial Ex. 1 (Mirchandani WDT ¶¶ 22, 26); 3/15/17 Tr. at 1343:10-23 (Mirchandani).

Pricing Options Facilitate the Expansion of Legal Music Consumption.

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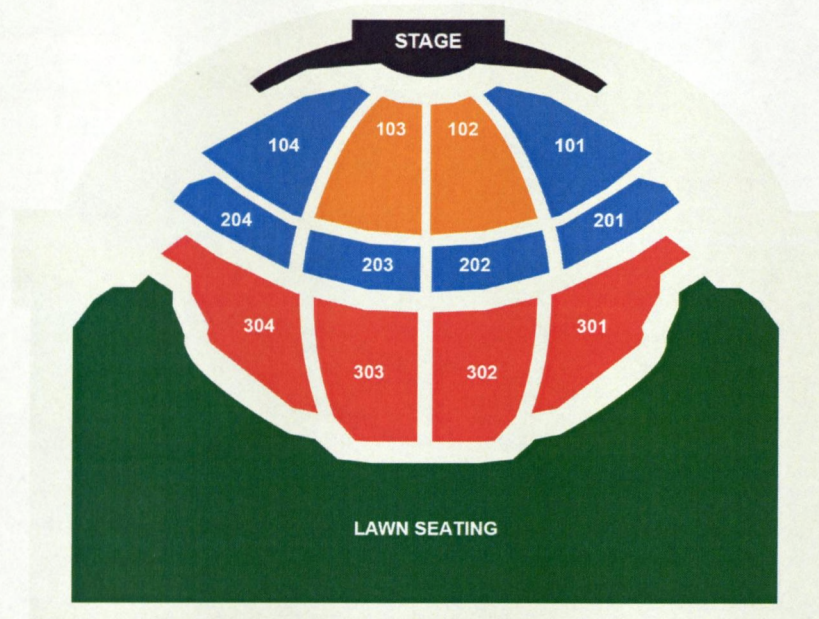


- Not currently paying for music on the internet (and those who would not pay for streaming music)

Flexible Rate Structure is Key



Tiered Offerings Expand the Market



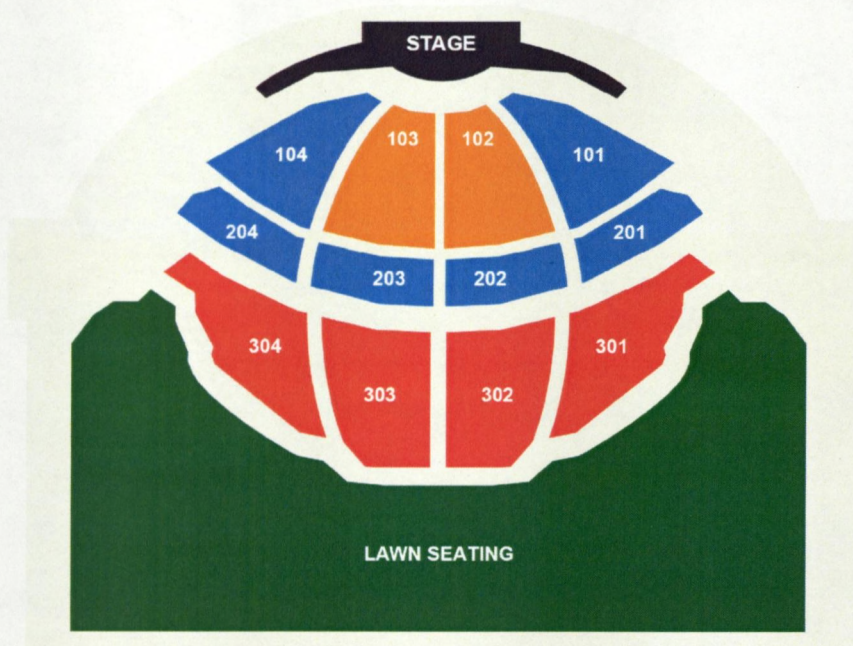
Full Catalog
Full Functionality

Full Catalog
Limited Functionality

Limited Catalog

Limited
Functionality

Tiered Offerings Expand the Market



Gateways to Streaming

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Prime Music Users

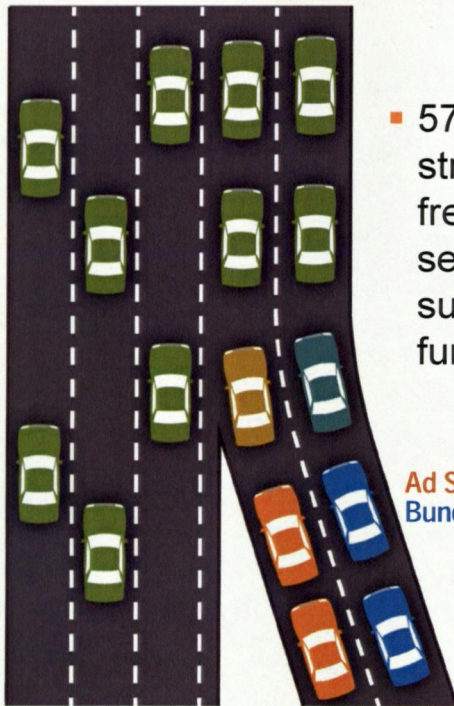


**29% Never Used
Another Streaming Service**

The Power of the Ramp

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Subscription Based
Streaming Users



- 57% of respondents who currently paid for a streaming subscription had exclusively used a free, ad-supported, or bundled streaming music service prior to beginning their current subscription, suggesting that lower-end services function as ramps to higher-end services

Ad Supported and
Bundled Streaming Users

ON
RAMP

Consumer Segments – Different Consumers Value Music Differently

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- Of respondents who indicated they would no longer pay for streaming if the price increased by \$1 or \$2, 23.3% would resort to unlicensed streaming options

Source: Trial Ex. 249 (Klein WRT ¶¶ 68, Tables 7, 8).

Flexible Rate Structure is Key

**Licensed Music
Streaming Services**

*Premium
Service*

*Mid-Tier
Service*

*Low End
Service*

Source: Trial Ex. 111 (Mirchandani WRT ¶¶ 40); Trial Ex. 249 (Klein ¶¶ 68, Tables 7, 8).

Flexible Rate Structure is Key

**Licensed Music
Streaming Services**

Lane
Closed

Lane
Closed

Lane
Closed

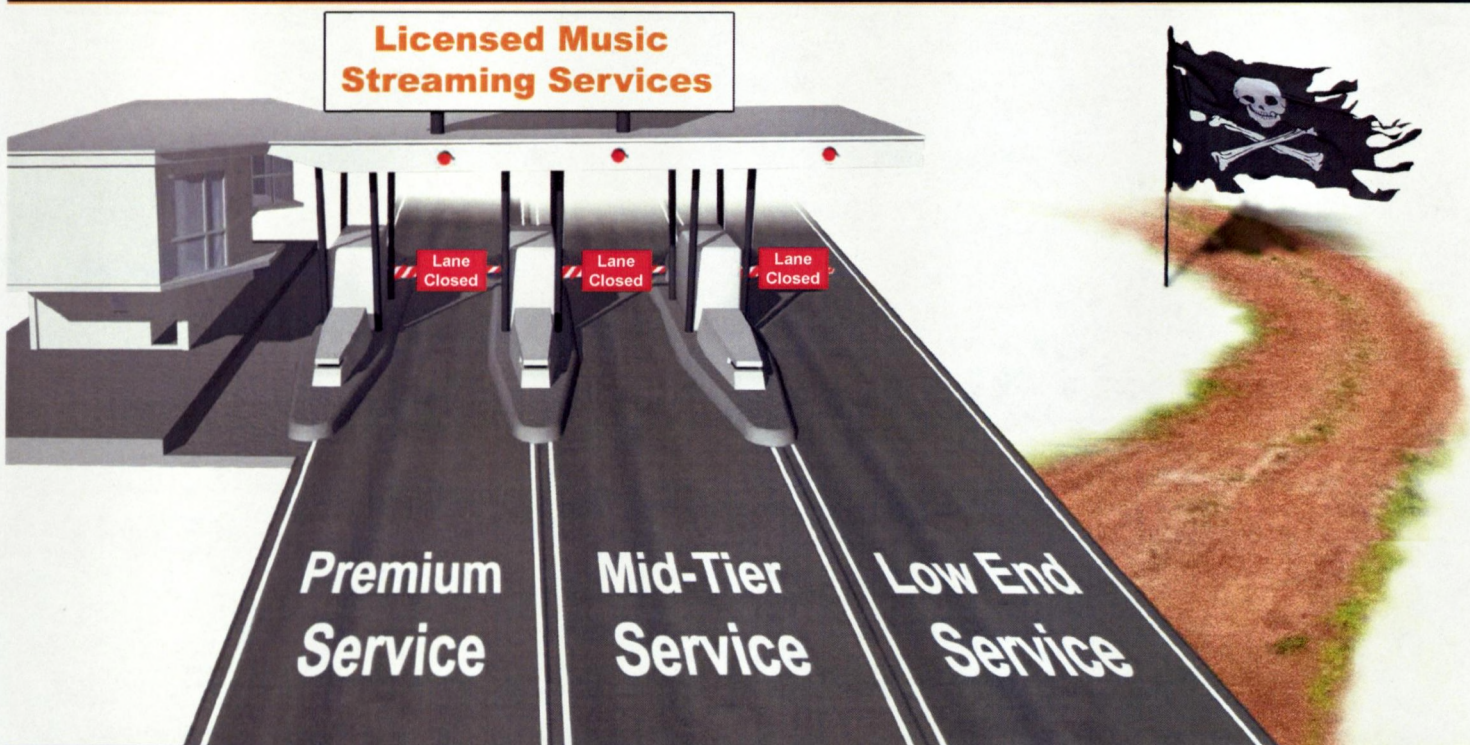
*Premium
Service*

*Mid-Tier
Service*

*Low End
Service*

Source: Trial Ex. 111 (Mirchandani WRT ¶ 40); Trial Ex. 249 (Klein ¶ 68, Tables 7, 8).

Flexible Rate Structure is Key

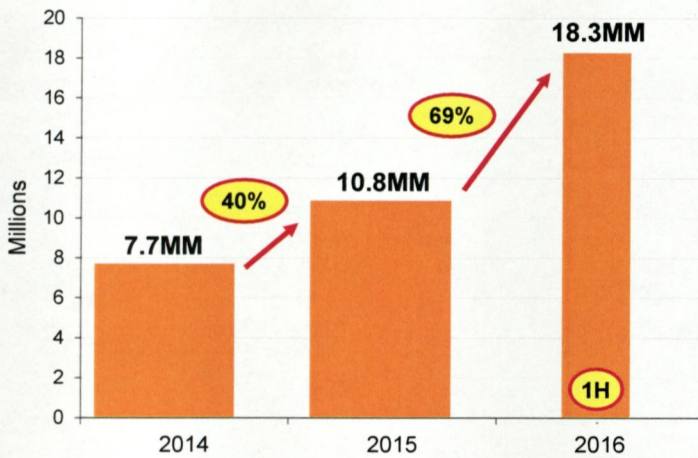


Source: Trial Ex. 111 (Mirchandani WRT ¶ 40); Trial Ex. 249 (Klein ¶ 68, Tables 7, 8).

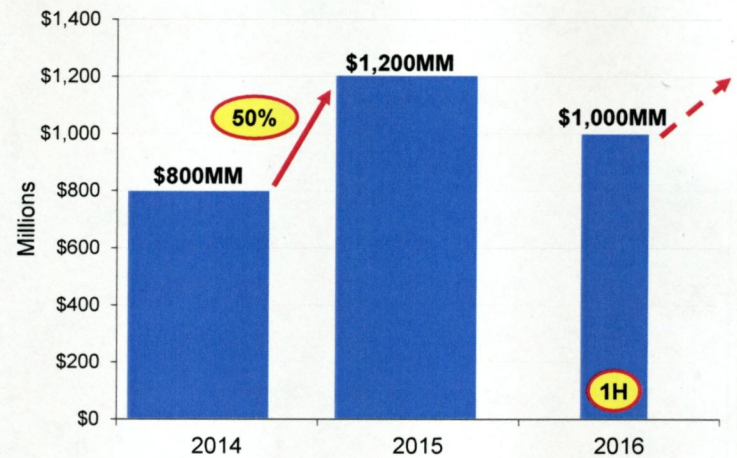
Paid Subscriptions and Paid Subscription Revenues Are Up

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Average Subscribers



Subscription Revenues



Source: Trial Ex. 1 (Mirchandani WDT ¶ 53); 3/15/17 Tr. at 1368:23-1369:3 (Mirchandani); Trial Ex. 7 (News and Notes on 2014 RIAA Music Industry Shipment and Revenue Statistics).

Publishers are Making More Money

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Israelite

- Israelite admitted that total industry revenue increased by 16.2%—an increase of more than \$350 million
- For 2014 to 2015, NMPA data showed a 26.7% increase in performance royalties
- Israelite admitted that the 26.7% increase in performance royalties more than offset the 2.6% reduction in mechanical revenue attributable to decline in physical revenue
- Mechanicals for streaming (including ad-supported and subscription models) increased by 36.8%

- Difference between 2014 Total Actual Revenue (\$2,166,826,613) and 2015 Total Actual Revenue (\$2,517,063,512.31)= 16.2% INCREASE

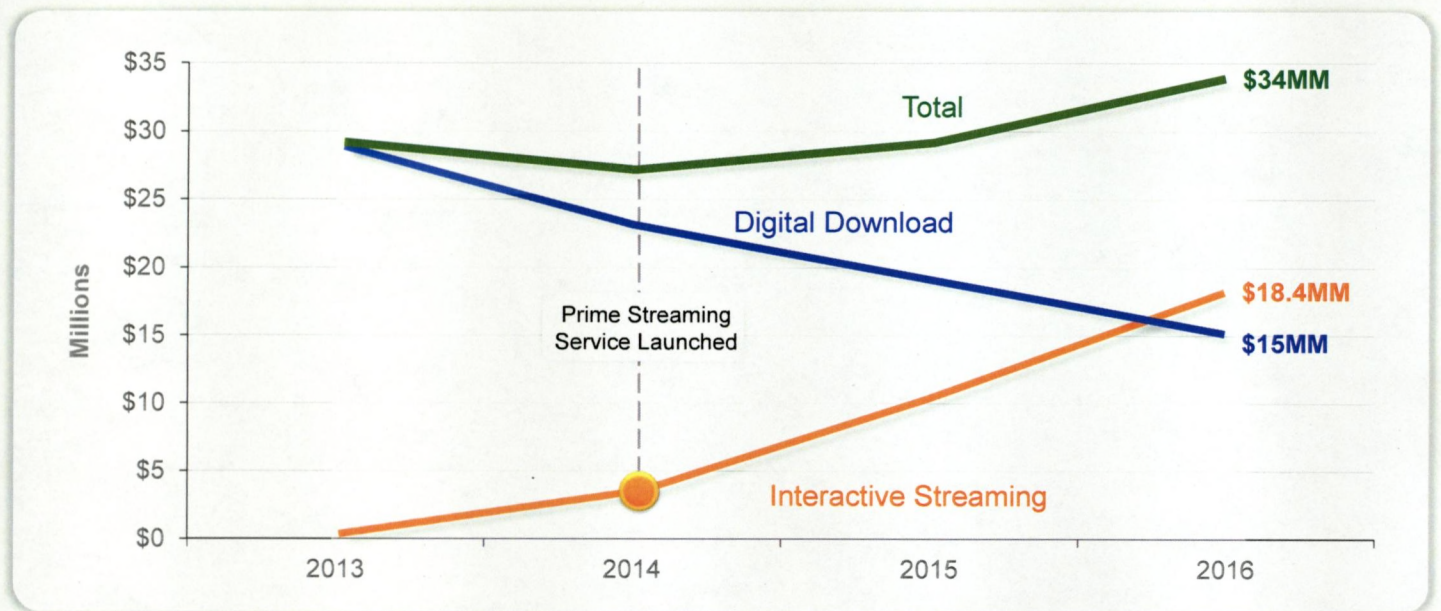
Songwriter Membership and Content is On the Rise



- Nearly 40,000 songwriters, composers, and music publishers joined ASCAP in 2015
- BMI's Distribution & Administration team processed an impressive 56,000 new songwriter, composer and publisher applications, bringing fiscal year 2015's total number of affiliates to more than 700,000
- The total number of creative works now registered and licensed by BMI has grown to more than 10.5 million

Publishing Royalties Generated by Amazon 2013 – 2016

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Source: Trial Ex. 1 (Mirchandani WDT ¶ 37); Trial Ex. 127 (Digital Music Publishing Royalties for 2013-2016).